

MONTANA LEGISLATIVE HISTORY

BEST COPY
AVAILABLE

Chapter 468 19 93

Bill H 177 S _____ Original bill & history X c

H. Committee on Labor & Employment Relations S. Committee on Labor & Employment Relations

Hearing Date(s) Jan 19 ✓ C
_____ C

Hearing Date(s) Feb 11 ✓ C
_____ C

_____ C
_____ C

_____ C
_____ C

Date Out Jan 21 ✓ C

Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____

Report _____

HOUSE BILL NO. 174

INTRODUCED BY CLARK, FELAND, VOGEL, DRISCOLL,
MOLNAR, COCCHIARELLA

IN THE HOUSE

JANUARY 14, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON LABOR & EMPLOYMENT RELATIONS.
	FIRST READING.
JANUARY 23, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
JANUARY 25, 1993	PRINTING REPORT.
JANUARY 26, 1993	SECOND READING, DO PASS.
JANUARY 27, 1993	ENGROSSING REPORT.
JANUARY 28, 1993	THIRD READING, PASSED. AYES, 100; NOES, 0.
	TRANSMITTED TO SENATE.

IN THE SENATE

JANUARY 30, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON LABOR & EMPLOYMENT RELATIONS.
	FIRST READING.
MARCH 19, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 20, 1993	ON MOTION, CONSIDERATION PASSED FOR THE DAY
MARCH 22, 1993	ON MOTION, CONSIDERATION PASSED FOR THE DAY
MARCH 23, 1993	SECOND READING, CONCURRED IN.
MARCH 24, 1993	THIRD READING, CONCURRED IN. AYES, 36; NOES, 14.
	RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 1, 1993

SECOND READING, AMENDMENTS
CONCURRED IN.

APRIL 2, 1993

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 House BILL NO. 174
 2 INTRODUCED BY Rep. David Enright
 3 Cashinella
 4 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING A POLICE
 5 OFFICER AND A SHERIFF'S DEPUTY COVERED BY A COLLECTIVE
 6 BARGAINING AGREEMENT TO APPEAL A DISCIPLINARY ACTION
 7 PURSUANT TO A GRIEVANCE PROCEDURE CONTAINED IN A COLLECTIVE
 8 BARGAINING AGREEMENT; AND AMENDING SECTIONS 7-32-2109,
 9 7-32-2110, AND 7-32-4164, MCA."

10
 11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 **Section 1.** Section 7-32-2109, MCA, is amended to read:

13 "7-32-2109. Right to hearing on termination of deputy
 14 sheriff's employment. (1) Any A deputy sheriff whose
 15 employment is terminated may, within 30 days from the date
 16 of the termination of his employment, make application has a
 17 right of appeal:

18 (a) to the district court of the county wherein where
 19 the deputy was employed for a hearing before the court, with
 20 or without jury, on the charges resulting in the deputy's
 21 termination of employment or discharge; or

22 (b) pursuant to the terms of a grievance procedure
 23 contained in a collective bargaining agreement if the deputy
 24 sheriff is covered by a collective bargaining agreement.

25 (2) The appeal to the district court must be made

1 within 30 days from the date of the termination of
 2 employment."

3 **Section 2.** Section 7-32-2110, MCA, is amended to read:

4 "7-32-2110. Reinstatement of deputy sheriff. In the
 5 event that a deputy prevails at the hearing provided for in
 6 7-32-2109, he shall be entitled to a termination is reversed
 7 or modified, the deputy must be reinstated as a deputy
 8 sheriff at the same salary he received by the deputy prior
 9 to his the discharge or termination of employment, and he
 10 shall also be The deputy is also entitled to any rights that
 11 might have accrued to his the deputy's benefit prior to his
 12 the discharge or termination of employment, including that
 13 the salary which he that the deputy would have received but
 14 for the termination."

15 **Section 3.** Section 7-32-4164, MCA, is amended to read:

16 "7-32-4164. District court review Right to appeal. A
 17 member of the police force who is disciplined, suspended,
 18 removed, or discharged as a result of a decision by the
 19 police commission or an order of the mayor has a right of
 20 appeal:

21 (1) pursuant to the terms of a grievance procedure
 22 contained in a collective bargaining agreement if the member
 23 is covered by a collective bargaining agreement; or

24 (2) to The the district court of the proper county.
 25 shall have jurisdiction to review all questions of fact and

1 ~~all-questions-of-law-in-a-suit-brought-by-any-officer-or~~
2 ~~member-of-the-police-force-but-no~~ A suit to review such
3 ~~hearing-or-trial~~ a decision or an order or for reinstatement
4 to office ~~shall~~ may not be maintained unless the ~~same~~ suit
5 is begun within a period of 60 days after the decision ~~of~~ by
6 the police commission or order of the mayor has been filed
7 with the city clerk."

-End-

3/19	3RD READING CONCURRED	47	0
	RETURNED TO HOUSE		
3/24	SIGNED BY SPEAKER		
3/25	SIGNED BY PRESIDENT		
3/25	TRANSMITTED TO GOVERNOR		
3/30	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 225		
	EFFECTIVE DATE: 10/01/93		

HB 172 INTRODUCED BY WANZENRIED, ET AL.
 REQUIRE PUBLIC SERVICE COMMISSION TO SET MINIMUM RATE FOR
 CLASS E MOTOR CARRIERS

1/14	INTRODUCED
1/14	REFERRED TO HIGHWAYS & TRANSPORTATION
1/14	FIRST READING
2/12	TABLED IN COMMITTEE

HB 173 INTRODUCED BY KADAS
 ELIMINATE REQUIREMENT FOR VISUAL, AURAL, AND OTHER
 EDUCATIONAL MEDIA LIBRARY

1/14	INTRODUCED
1/14	REFERRED TO EDUCATION & CULTURAL RESOURCES
1/14	FIRST READING
1/20	HEARING
1/22	TABLED IN COMMITTEE
1/26	FISCAL NOTE REQUESTED
2/01	FISCAL NOTE RECEIVED
2/01	FISCAL NOTE PRINTED

HB 174 INTRODUCED BY CLARK, ET AL.
 ALLOW ARBITRATION RIGHTS FOR DEPUTY SHERIFFS AND POLICE
 OFFICERS

1/14	INTRODUCED		
1/14	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
1/14	FIRST READING		
1/19	HEARING		
1/23	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/26	2ND READING PASSED	98	0
1/28	3RD READING PASSED	100	0
	TRANSMITTED TO SENATE		
1/30	FIRST READING		
1/30	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
2/11	HEARING		
2/11	TABLED IN COMMITTEE		
3/19	MINORITY COMMITTEE REPORT ADOPTED—BILL CONCURRED AS AMENDED		
3/23	2ND READING CONCURRED	34	15
3/24	3RD READING CONCURRED	36	14
	RETURNED TO HOUSE WITH AMENDMENTS		
4/01	2ND READING AMENDMENTS CONCURRED	91	7
4/02	3RD READING AMENDMENTS CONCURRED	92	6
4/13	SIGNED BY SPEAKER		
4/14	SIGNED BY PRESIDENT		
4/16	TRANSMITTED TO GOVERNOR		
4/21	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 468		
	EFFECTIVE DATE: 10/01/93		

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By Tom Nelson, on January 19, 1993, at 3:05 p.m.

ROLL CALL

Members Present:

Rep. Tom Nelson, Chair (R)
Rep. Gary Feland, Vice Chair (R)
Rep. Steve Benedict (R)
Rep. Vicki Cocchiarella (D)
Rep. Jerry Driscoll (D)
Rep. Alvin Ellis (R)
Rep. Pat Galvin (D)
Rep. Norm Mills (R)
Rep. Bob Pavlovich (D)
Rep. Bruce Simon (R)
Rep. Carolyn Squires (D)
Rep. Bill Tash (R)
Rep. Rolph Tunby (R)
Rep. Carley Tuss (D)

Members Excused: Representative Sonny Hanson, and Representative Tim Whalen.

Members Absent: none

Staff Present: Susan Fox, Legislative Council
Cherri Schmaus, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 174
Executive Action: HB 73, HB 174

HEARING ON HB 174

Opening Statement by Sponsor:

REP. BOB CLARK, HD 31, Golden Valley, sponsor, opened on HB 174 by stating that this bill will allow police officers and sheriff deputies to be covered by a collective bargaining agreement to appeal disciplinary action pursuant to grievance procedure contained in a collective bargaining agreement.

In 1991, there was a bill that was similar to this one, but it

only affected the highway patrol. This bill did pass and they have had no problems with this bill so far. He stated that the reason he was here today is to make sure the same rights are available to police officers and sheriff deputies.

He referred to the amendment page and read the correction. (EXHIBIT #2) He stated that this bill is a good piece of legislation and he turned it over to the proponents.

Proponents' Testimony:

Tom Schneider, Montana Public Employees Association, started his testimony by giving some information on the background situation of the bill and where it came from.

In 1974, the state passed a Collective Bargaining Act for all state employees and local government employees. This act gave everyone the right to negotiate a grievance procedure which could or could not end up in binding arbitration depending on what was being negotiated. At that time there had already been statutes dealing with highway patrol officers, police officers and sheriff deputies. These laws gave them the right to appeal a discipline or a discharge to the district court. Because this was statutory law, the Collective Bargaining Act did not allow those three groups of people to negotiate a grievance procedure dealing with discipline and discharge because the law was clear that they went to the district court. Some problems arose by taking these cases to district court. They especially had problems with the highway patrol. The problem with district courts is that they are overcrowded and they are not set up to deal with determination or disciplinary actions. Furthermore, everyone else was going to arbitrators and they just thought it would be cleaner for the highway patrols to go through a grievance process to arbitration. Arbitration was tried in 1991 and it is in the contract with the highway patrol. This has worked well so far, and management doesn't have any objections to passing this bill today.

In the last two years there have been similar problems in the police department. This bill doesn't say that management must negotiate a grievance. This bill just allows them to if they wish. Nothing is mandatory, it just takes away the old prohibitions. If HB 174 passes, they have the right to decide on a grievance. If they choose not to, they still go to the district court.

The district court is overburdened with other things. Furthermore, in court anyone can appeal. District court is not timely, is costly and not in the best interest of either side. All of the employees can file a grievance; however, it goes through a specific process, through binding arbitration, and then the arbitrator makes a final decision. Either the person was disciplined properly or they were not or they were fired properly or they were not. One case, one hearing, one decision and then the case is over. This process is much cleaner because

arbitrators are trained to deal with discipline. Furthermore, all this bill will do is allow management and the union to sit down and decide if this is the process they want to use. If this is the process they want to use, they can put it in the contract and have the legal right to do it. He handed in written testimony (EXHIBIT #1)

Opponents' Testimony: None

Questions From Committee Members and Responses:

REP. PAVLOVICH asked the sponsor about the amendment and if there was a conflict. He further stated that he feels it should also include the words chief executive because that is what they are called in Butte. Rep. Clark stated that chief executive should be added to the amendments.

CHAIRMAN NELSON asked the sponsor if because the cases now go to district court if the grievance procedure is done or if there is an appeal process or if the case is just closed? Rep. Clark answered that nothing will change what is currently in place.

Closing by Sponsor:

REP. CLARK closed on HB 174. He stated that he supports this bill because there is no fiscal note and no cost. Furthermore, if appeals do go to court, it costs the union members and the government lots of money. These costs are paid with tax dollars. Passing this bill will save money.

EXECUTIVE ACTION ON HB 174

Motion: REP. PAVLOVICH MOVED HB 174 DO PASS.

Motion/Vote: REP. PAVLOVICH MOVED TO ADOPT THE AMENDMENT. REP. PAVLOVICH MOVED HB 174 DO PASS AS AMENDED. Question was called. A voice vote was taken. Motion carried unanimously.

EXECUTIVE ACTION ON HB 73

Motion: REP. SQUIRES MOVED HB 73 DO PASS.

Discussion:

CHAIRMAN NELSON went over each amendment separately with the committee.

REP. BENEDICT stated that although it looks like this bill will only cover summer employment, he stated that he sees a few problems with amendment #5, line 6, page 2. He feels the amendments should be split.

MONTANA

1426 Cedar Street • P.O. Box 5600

Helena, Montana 59604

Telephone (406) 442-4600
Toll Free 1-800-221-3468

PUBLIC

EMPLOYEES

ASSOCIATION

EXHIBIT 1

DATE 2/19/93

HB 174

EXH #1

HOUSE LABOR

2/19/93

Janaury 19, 1993

TO: House Labor Committee

FROM: Thomas E. Schneider, Executive Director

SUBJECT: HB 174

With the passage of the Collective Bargaining Act in 1974 all public employees covered by the Act received the right to bargaining for a grievance procedure to resolve, among other things, discipline and discharge.

Police Officers, Deputy Sheriffs and Highway Patrol Officers already had the statutory right to appeal through the court system.

Through the years it has become apparent that the court system is not the place to resolve such grievances because of the work load of the court, never ending appeals and excessive amounts of time and expense involved.

The legislature in 1991 passed HB 232 sponsored by Rep. Clark which gave members of the Montana Highway Patrol the right to grieve and arbitrate discipline and discharge in lieu of going to court. The process has been accepted by both management and the employees.

Since that time similar problems have arisen in the Police Officer contracts and we now appeal with HB 174 to give Police Officers and Sheriff Deputies the same rights as all other public employees including Montana Highway Patrol Officers.

We feel that HB 174 will allow management and the employees the right to sit down at the bargaining table and set up a discipline and discharge relsoution which will relieve the court system and meet the needs of both parties.

Eastern Region
P.O. Box 22093
Billings, MT 59104
(406) 245-2252

Western Region
P.O. Box 4874
Missoula, MT 59806
(406) 251-2304



HOUSE OF REPRESENTATIVES

LABOR

COMMITTEE

ROLL CALL

DATE _____

1/19/93

[illegible]

HOUSE OF REPRESENTATIVES

LABOR

COMMITTEE

ROLL CALL VOTE

DATE: 1/26/93 BILL NO. 174 NUMBER

MOTION: Do pass as amended

NAME	AYE	NO
REP. TOM NELSON, CHAIRMAN	✓	
REP. GARY FELAND, VICE CHAIRMAN	✓	
REP. STEVE BENEDICT	✓	
REP. VICKI COCCHIARELLA	✓	
REP. JERRY DRISCOLL	✓	
REP. ALVIN ELLIS	✓	
REP. PAT GALVIN	✓	
REP. SONNY HANSON	✓	
REP. NORM MILLS	✓	
REP. BOB PAVLOVICH	✓	
REP. BRUCE SIMON	✓	
REP. CAROLYN SQUIRES	✓	
REP. BILL TASH	✓	
REP. ROLPH TUNBY	✓	
REP. CARLEY TUSS	✓	
REP. TIM WHALEN	✓	

HOUSE STANDING COMMITTEE REPORT

January 21, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Labor report that House Bill 174 (first reading copy -- white) do pass as amended.

Signed: 
Tom Nelson, Chair

And, that such amendments read:

1. Page 2, line 19.

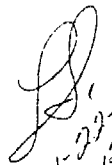
Following: "mayor"

Insert: ", city manager, or chief executive"

2. Page 3, line 6.

Following: "mayor"

Insert: ", city manager, or chief executive"


1-22-93
12:50

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

LABOR COMMITTEE H BILL NO. 174
DATE 1/19/93 SPONSOR(S) CLARK

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Tom Foley	AFSCME	X	
Tom Schneider	IMPEA	X	
Jim Tillotson	City of Billings		X

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

MINUTES

MONTANA SENATE 53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By Sen. Tom Towe, on February 11, 1993, at 1:05 P.M.

ROLL CALL

Members Present:

Sen. Tom Towe, Chair (D)
Sen. Bill Wilson, Vice Chair (D)
Sen. Gary Aklestad (R)
Sen. Chet Blaylock (D)
Sen. Jim Burnett (R)
Sen. Tom Keating (R)
Sen. J.D. Lynch (D)

Members Excused: None

Members Absent: None

Staff Present: Eddye McClure, Legislative Council
Patricia Brooke, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 174
Executive Action: SB 163, HB 174

HEARING ON HB 174

Opening Statement by Sponsor:

Representative Clark, HD 31, stated HB 174 allows police officers and sheriff deputies covered by a collective bargaining agreement to appeal a disciplinary action pursuant to a grievance procedure contained in a collective bargaining agreement. Rep. Clark informed the Committee that in 1991 there was a similar bill that only affected highway patrol officers. It has been in effect without any problems. Rep. Clark also informed the Committee HB 174 passed the House 100-0.

Proponents' Testimony:

Tom Schneider, Executive Director, Montana Public Employees Association, submitted written testimony (Exhibit #2). Mr. Schneider emphasized HB 174 does not mandate anything.

John Manger, Business Representative, Teamsters' Union, urged the

District Court.

Sen. Towe asked Alec Hanson what is wrong with going through the Police Commission procedure and then allowing an appeal into the grievance procedure or into an arbitration procedure after that. Mr. Hanson referred the question to Bill Ware who responded that management wants to reserve the right to hire, fire, and discipline. Mr. Ware said the officers have an appeal process in place and they should be held accountable for their actions. Mr. Ware said he does not believe that the unions should be getting something in a union contract to negate that. He said HB 174 is a "union bill."

Sen. Towe rephrased his question to Mr. Ware and asked, assuming the current process is kept and the only change is that instead of appealing to court on the decision, the party can go through arbitration, what is the problem. Mr. Ware stated the problem is the arbitrator does not have to follow due process. Alec Hanson stated the reason his Organization is opposed to HR 174 is because it creates another step to the process, adds to the cost, and the city has no right to appeal. Sen. Towe stated that generally it is cheaper to go through arbitration than to go to District Court.

Sen. Towe asked Mr. Schneider how he responds to the argument that to inject a grievance procedure seems an unrealistic addition to the whole process. Mr. Schneider said the intention is to spell out the grievance procedure in the contract not mandate an appeal to District Court, rather go through collective bargaining with the intention to get to binding arbitration.

Sen. Towe asked Mr. Schneider if the proposed process reduces the role of the Police Commission to something very meaningless if all parties know the dispute will end up in final arbitration, regardless of what the Commission decides. Mr. Schneider stated that situation exists now where everyone knows the decision will end up in District Court.

Sen. Towe asked Mr. Schneider what he thinks of the proposed amendment that puts the Police Commission process after the District Court. Mr. Schneider stated his understanding is that the officer chooses at the start which process to go through.

Sen. Keating asked Mr. Schneider if the Police Commission can render a decision that is not final, but that the mayor can accept, amend, or reject. Mr. Schneider responded in the affirmative.

Closing by Sponsor:

Rep. Clark stated HR 274 will give officers a choice and he supports the proposed amendment.

EXECUTIVE ACTION ON SB 163

passage of HB 174 because it will clear up questions about rights to a collective bargaining agreement and prevent unnecessary litigation.

Opponents' Testimony:

Alec Hansen, Montana League of Cities and Towns, suggested an amendment to HB 174(Exhibit #4) and informed the Committee each municipality has a Police Commission that works effectively in doing what it was set up to do(Exhibit #3). Mr. Hansen feels the existing system is effective and to bring an arbitrator in from outside the city would not be a good idea.

Bill Ware, Helena Police Chief and Montana Organization for Chiefs of Police, stated his opposition to HB 174. Mr. Ware stated the Police Commission does work and has over the years. Mr. Ware said the Police Commission provides due process by law and officers can appeal to the District and Supreme Courts. He feels the system does work.

Jim Oberhofer, Missoula Police Chief, told the Committee the Police Commission works and urged the Committee to vote against HB 174.

Jerry Williams, Montana Police Protective Association, stated his opposition to HB 174. Mr. Williams has not had any problems in Silver Bow County with the Police Commission.

Informational Testimony:

None

Questions From Committee Members and Responses:

Sen. Lynch stated to Officer Williams that HB 174 does not take away the Police Commission but gives officers the option, after the Police Commission makes a decision, to continue on to either the court or arbitration. Officer Williams responded it is his understanding that once the officer goes through the Police Commission process, and the City Manager or Chief Executive of the City upholds the decision, then the officer can go back and go through the grievance procedure. Officer Williams stated that at the present time there is one procedure and he feels that is fair.

Sen. Lynch asked Rep. Clark if there is a way that a municipality can have an option to abide by HB 174 or keep their current procedures. Rep. Clark replied a grievance procedure comes first, then the arbitration. After that the officer has a choice between going to arbitration or going to court. Tom Schneider, Montana Public Employees Association, said this is not true. Mr. Schneider said HB 174 does not mandate binding arbitration. HB 174 says that if a person is covered by a contract, after the final decision (which is not made by the Police Commission, but by the Mayor), then there is an option to go to final arbitration or District Court. At present, it is mandatory the party go to

Discussion: Russell Hill, Montana Trial Lawyers Association, discussed the issue of immunity in SB 163. Mr. Hill explained that in the context of the amendments, negligence only covers the instance when the safety consultants are on the scene. Mr. Hill's concern is that when the insurer, when rendering the services, is grossly negligent or wanton misconduct is involved, and two months later as a result of the program that was initiated, somebody is hurt. In that instance there is a difference between actual malice (as addressed on page 9, line 4) and gross negligence or wanton misconduct.

Sen. Lynch stated he is not convinced SB 163 needs to be amended to address Mr. Hill's concerns.

Motion/Vote: Sen. Lynch moved SB 163 DO PASS AS AMENDED (Exhibit #1). The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON HR 174

Discussion: Sen. Towe stated there are two conflicting concepts when looking at HR 174. One is that the public has a large interest when dealing with the police officers which is why Police Commissions have been set up. The other concept is the collective bargaining concept, with the union being entitled to represent their members and advocate on their behalf. Arbitration is far superior for this, rather than taking it through a court process.

Motion: Sen. Burnett moved HR 174 DO NOT PASS.

Discussion: Sen. Keating stated he is not against collective bargaining, but the Police Commission that is set up appears to work. The Committee discussed the part of HR 174 that dictates the party must go to Court after the decision is made by the Police Commission. Sen. Blaylock stated his concern that the City Executive has the authority to ignore the decision made by the Police Commission. Sen. Keating suggested the Code can be amended to give the Police Commission final authority on the decision. Sen. Aklestad stated the vast majority of the officers do not want this bill passed.

Motion/Vote: Sen. Lynch made a substitute motion to TABLE HR 174. The motion passed with Senators Blaylock, Burnett, and Towe voting NO.

PUBLIC

EMPLOYEES

ASSOCIATION

February 11, 1993

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. #2
DATE 2/11/93
BILL NO. HB 174

TO: Senate Labor Committee

FROM: Thomas E. Schneider, Executive Director

SUBJECT: HB 174

With the passage of the Collective Bargaining Act in 1974 all public employees covered by the Act received the right to bargaining for a grievance procedure to resolve, among other things, discipline and discharge.

Police Officers, Deputy Sheriffs and Highway Patrol Officers already had the statutory right to appeal through the court system.

Through the years it has become apparent that the court system is not the place to resolve such grievances because of the work load of the court, never ending appeals and excessive amounts of time and expense involved.

The legislature in 1991 passed HB 232 sponsored by Rep. Clark which gave members of the Montana Highway Patrol the right to grieve and arbitrate discipline and discharge in lieu of going to court. The process has been accepted by both management and the employees.

Since that time similar problems have arisen in the Police Officer contracts and we now appeal with HB 174 to give Police Officers and Sheriff Deputies the same rights as all other public employees including Montana Highway Patrol Officers.

We feel that HB 174 will allow management and the employees the right to sit down at the bargaining table and set up a discipline and discharge resolution which will relieve the court system and meet the needs of both parties.



EXHIBIT # 2

EXHIBIT # 2
DATE HOUSE L.A.S.
HB 2/1/93
HB 174

Amendments to House Bill No. 174
First Reading Copy

For the Committee on Labor

Prepared by Susan B. Fox
January 19, 1993

1. Page 2, line 19.
Following: "mayor"
Insert: ", city manager, or chief executive"
2. Page 3, line 6.
Following: "mayor"
Insert: ", city manager, or chief executive"

SENATE LABOR & EMPLOYMENT

7-32-4139 through 7-32-4150 reserved. EXHIBIT NO. 3DATE 2/11/93

7-32-4151. Police commission required in all cities and some towns. (1) In all cities and some towns, the ~~city~~ ^{mayor} or the manager in those cities operating under the commission-manager plan, shall nominate and, with the consent of the city council or commission, appoint three residents of such city or town who shall have the qualifications required by law to hold a municipal office therein and who shall constitute a board to be known by the name of "police commission". #B 174

(2) This section shall apply to organized police departments in every city and town of the state which have three or more full-time law enforcement officials, regardless of the form of government under which said city or town may be operating or may at any time adopt.

History: En. Sec. 4, Ch. 136, L. 1907; Sec. 3307, Rev. C. 1907; re-en. Sec. 5098, R.C.M. 1921; amd. Sec. 1, Ch. 119, L. 1923; re-en. Sec. 5098, R.C.M. 1935; amd. Sec. 1, Ch. 96, L. 1939; amd. Secs. 4, 5, Ch. 152, L. 1947; amd. Sec. 1, Ch. 194, L. 1975; R.C.M. 1947, 11-1804(part).

Cross-References

Municipal commission-manager government, Title 7, ch. 3, part 43.

Municipalities, Title 7, ch. 4, part 41.

7-32-4152. Term and compensation of members of police commission. (1) The appointees to the police commission shall hold office for 3 years, and one such member must be appointed annually at the first regular meeting of the city council or commission in May of each year. However, a member serving on the commission during the hearing or deciding of a case under 7-32-4155 shall continue to serve on the commission for that case until a decision has been made; a new member may not sit on the commission for such business.

(2) The compensation of the members of such board shall be fixed by the city council or commission, not to exceed \$10 per day or more than \$50 per month for any month for each member in cities of the first and second class.

History: En. Sec. 4, Ch. 136, L. 1907; Sec. 3307, Rev. C. 1907; re-en. Sec. 5098, R.C.M. 1921; amd. Sec. 1, Ch. 119, L. 1923; re-en. Sec. 5098, R.C.M. 1935; amd. Sec. 1, Ch. 96, L. 1939; amd. Secs. 4, 5, Ch. 152, L. 1947; amd. Sec. 1, Ch. 194, L. 1975; R.C.M. 1947, 11-1804(part); amd. Sec. 1, Ch. 453, L. 1979.

Cross-References

Compensation and duties of city employees, 7-5-4110.

Conduct of Municipal Council business, 7-5-4121.

7-32-4153. Meaning of word mayor. Wherever the word "mayor" is used in 7-32-4109 and 7-32-4160 through 7-32-4163, it is intended to include "city manager", "city commissioner", or any other name or designation used to identify or designate the chief executive of any city or municipality.

History: En. Sec. 6, Ch. 136, L. 1907; Sec. 3309, Rev. C. 1907; re-en. Sec. 5100, R.C.M. 1921; amd. Sec. 4, Ch. 119, L. 1923; re-en. Sec. 5100, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1955; amd. Sec. 1, Ch. 23, L. 1959; R.C.M. 1947, 11-1806(11); amd. Sec. 27, Ch. 370, L. 1987.

7-32-4154. Role of police commission in examination of applicants for police force. It shall be the duty of the police commission to examine all applicants whose applications have been referred to the commission as to their

age, legal, mental, moral, and physical qualifications and their ability to fill the office as a member of the police force. It shall also be the duty of the police commission, subject to the approval of the mayor, to make such rules regarding such examinations not inconsistent with this part or the laws of the state.

History: En. Sec. 5, Ch. 136, L. 1907; Sec. 3308, Rev. C. 1907; amd. Sec. 2, Ch. 198, L. 1921; re-en. Sec. 5099, R.C.M. 1921; amd. Sec. 3, Ch. 119, L. 1923; re-en. Sec. 5099, R.C.M. 1935; R.C.M. 1947 11-1805(part).

Cross-References

Structure of Department of Public Safety
— duties, 7-32-103.

Veterans' public employment preference,
Title 39, ch. 29.

Handicapped persons' public employment
preference, Title 39, ch. 30.

7-32-4155. Role of police commission in hearing and deciding charges against policemen. (1) The police commission shall have the jurisdiction and it shall be its duty to hear, try, and decide all charges brought by any person or persons against any member or officer of the police department, including any charge that such member or officer:

(a) is incompetent or has become incapacitated, by age, disease, or otherwise, to discharge the duties of his office;

(b) has been guilty of neglect of duty, of misconduct in his office, or of conduct unbecoming a police officer;

(c) has been found guilty of any crime; or

(d) whose conduct has been such as to bring reproach upon the police force.

(2) It is the duty of the police commission, at the time set for hearing a charge against a police officer, to forthwith proceed to hear, try, and determine the charge according to the rules of evidence applicable to courts of record in the state.

History: En. Sec. 6, Ch. 136, L. 1907; Sec. 3309, Rev. C. 1907; re-en. Sec. 5100, R.C.M. 1921; amd. Sec. 4, Ch. 119, L. 1923; re-en. Sec. 5100, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1955; amd. Sec. 1, Ch. 28, L. 1959; R.C.M. 1947, 11-1806(part).

Cross-References

Department of Public Safety — hearing
required for discharge of subordinate
employee, 7-32-107.

Right to hearing on termination of Deputy
Sheriff's employment, 7-32-2109.

Montana Rules of Evidence, Title 26, ch.
10.

7-32-4156. Charges to be in writing. Any charge brought against any member of the police force must be in writing in the form required by the police commission, and a copy thereof must be served upon the accused officer or member at least 15 days before the time fixed for the hearing of such charge.

History: En. Sec. 6, Ch. 136, L. 1907; Sec. 3309, Rev. C. 1907; re-en. Sec. 5100, R.C.M. 1921; amd. Sec. 4, Ch. 119, L. 1923; re-en. Sec. 5100, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1955; amd. Sec. 1, Ch. 28, L. 1959; R.C.M. 1947, 11-1806(2).

Cross-References

Sheriffs — written notice of termination of
deputy's employment required, 7-32-2108.

7-32-4157. Rights of accused policeman. The accused shall have the right to be present at the trial in person and by counsel and to be heard and to give and furnish evidence in his defense.

History: En. Sec. 6, Ch. 136, L. 1907; Sec. 3309, Rev. C. 1907; re-en. Sec. 5100, R.C.M. 1921; amd. Sec. 4, Ch. 119, L. 1923; re-en. Sec. 5100, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1955; amd. Sec. 1, Ch. 28, L. 1959; R.C.M. 1947, 11-1806(part).

Cross-References

Rights of the accused, Art. II, sec. 24, Mont. Const.

7-32-4158. Police commission trials open to public. All trials shall be open to the public.

History: En. Sec. 6, Ch. 136, L. 1907; Sec. 3309, Rev. C. 1907; re-en. Sec. 5100, R.C.M. 1921; amd. Sec. 4, Ch. 119, L. 1923; re-en. Sec. 5100, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1955; amd. Sec. 1, Ch. 28, L. 1959; R.C.M. 1947, 11-1806(part).

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

7-32-4159. Subpoena authority of police commission. The chairman or acting chairman of the police commission shall have power to issue subpoenas, attested in its name, to compel the attendance of witnesses at the hearing, and any person duly served with a subpoena is bound to attend in obedience thereto. The police commission shall have the same authority to enforce obedience to the subpoena and to punish the disobedience thereof as is possessed by a judge of the district court in like cases; provided, however, that punishment for disobedience is subject to review by the district court of the proper county.

History: En. Sec. 6, Ch. 136, L. 1907; Sec. 3309, Rev. C. 1907; re-en. Sec. 5100, R.C.M. 1921; amd. Sec. 4, Ch. 119, L. 1923; re-en. Sec. 5100, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1955; amd. Sec. 1, Ch. 28, L. 1959; R.C.M. 1947, 11-1806(4).

Cross-References

Subpoenas, Rule 45, M.R.Civ.P. (see Title 25, ch. 20).

Subpoenas and witnesses, Title 26, ch. 2.

7-32-4160. Decision by police commission — veto power of mayor.
(1) The police commission must, after the conclusion of the hearing or trial, decide whether the charge was proven or not proven and shall have the power, by a decision of a majority of the commission, to discipline, suspend, remove, or discharge any officer who shall have been found guilty of the charge filed against him.

(2) Such action of the police commission shall, however, be subject to modification or veto by the mayor, made in writing and giving reasons therefor, which shall become a permanent record of the police commission; provided, however, that where and when the police commission decides the charge not proven, the decision is final and conclusive and is not subject to modification or veto by the mayor or to any review.

(3) Where the police commission decides the charge proven, the mayor, within 5 days from the date of the filing of such findings and decision with the city clerk, may modify or veto such findings and decision.

History: En. Sec. 6, Ch. 136, L. 1907; Sec. 3309, Rev. C. 1907; re-en. Sec. 5100, R.C.M. 1921; amd. Sec. 4, Ch. 119, L. 1923; re-en. Sec. 5100, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1955; amd. Sec. 1, Ch. 28, L. 1959; R.C.M. 1947, 11-1806(5), (6).

EXHIBIT 3

DATE 2-11-93

HB 174

Cross-References

Duties of City Clerk related to city records and papers, 7-4-4502.

Powers and duties of Mayor related to administration and executive function, 7-5-4102.

7-32-4161. Enforcement of decision. When a charge against a member of the police force is found proven by the board and is not vetoed by the mayor, the mayor must make an order enforcing the decision of the board or the decision as modified if modified by the mayor. Such decision or order shall be subject to review by the district court of the proper county on all questions of fact and all questions of law.

History: En. Sec. 6, Ch. 136, L. 1907; Sec. 3309, Rev. C. 1907; re-en. Sec. 5100, R.C.M. 1921; amd. Sec. 4, Ch. 119, L. 1923; re-en. Sec. 5100, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1955; amd. Sec. 1, Ch. 28, L. 1959; R.C.M. 1947, 11-1806(7).

Cross-References

Powers of Mayor related to municipal officers, personnel, and citizens, 7-4-4303.

Powers and duties of Mayor related to administration and executive function, 7-5-4102.

7-32-4162. Hearing required prior to dismissal of policeman. In no case shall any officer or member of the police force be discharged without a hearing or trial before the police commission as provided in 7-32-4155 in all cities of the first class, all cities of the second class, any and all cities having a duly and regularly appointed, qualified, and acting police commission, and all cities and municipalities functioning under the commission form, city manager plan, or a mayor.

History: En. Sec. 6, Ch. 136, L. 1907; Sec. 3309, Rev. C. 1907; re-en. Sec. 5100, R.C.M. 1921; amd. Sec. 4, Ch. 119, L. 1923; re-en. Sec. 5100, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1955; amd. Sec. 1, Ch. 28, L. 1959; R.C.M. 1947, 11-1806(9).

Cross-References

Department of Public Safety — hearing required for discharge of subordinate employee, 7-32-107.

Right to hearing on termination of Deputy Sheriff's employment, 7-32-2109.

7-32-4163. Temporary suspensions. The mayor, or chief of police, subject to the approval of the mayor, shall have the power in all cases to suspend a policeman or any officer for a period of not exceeding 10 days in any one month, such suspension to be with or without pay as the order of suspension may determine. Any officer suspended, with or without pay, is entitled to appeal such suspension to the police commission.

History: En. Sec. 6, Ch. 136, L. 1907; Sec. 3309, Rev. C. 1907; re-en. Sec. 5100, R.C.M. 1921; amd. Sec. 4, Ch. 119, L. 1923; re-en. Sec. 5100, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1955; amd. Sec. 1, Ch. 28, L. 1959; R.C.M. 1947, 11-1806(part).

Cross-References

Powers of Mayor related to municipal officers, personnel, and citizens, 7-4-4303.

7-32-4164. District court review. The district court of the proper county shall have jurisdiction to review all questions of fact and all questions of law in a suit brought by any officer or member of the police force, but no suit to review such hearing or trial or for reinstatement to office shall be maintained unless the same is begun within a period of 60 days after the decision

of the police commission or order of the mayor has been filed with the city clerk.

History: En. Sec. 6, Ch. 136, L. 1907; Sec. 3309, Rev. C. 1907; re-en. Sec. 5100, R.C.M. 1921; amd. Sec. 4, Ch. 119, L. 1923; re-en. Sec. 5100, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1955; amd. Sec. 1, Ch. 28, L. 1959; R.C.M. 1947, 11-1806(8).

Part 42

Municipal Jails

Part Cross-References

County jails, Title 7, ch. 32, part 22.

7-32-4201. Municipal detention centers authorized. The city or town council has power to establish and maintain a detention center, as defined in 7-32-2120, for the confinement of persons convicted of violating the ordinances of the city or town and to make rules for the government of the same.

History: En. Subd. 35, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.34, R.C.M. 1935; R.C.M. 1947, 11-937; amd. Sec. 28, Ch. 461, L. 1989.

Cross-References

General powers of Municipal Council,

7-5-4101.

Detention centers, 7-32-2201.

7-32-4202. Repealed. Sec. 31, Ch. 461, L. 1989.

History: En. Subd. 53, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.52, R.C.M. 1935; R.C.M. 1947, 11-955.

7-32-4203. Repealed. Sec. 31, Ch. 461, L. 1989.

History: En. Subd. 52, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.51, R.C.M. 1935; R.C.M. 1947, 11-954.

Part 43

Powers of Municipal Council Related to Law Enforcement

Part Cross-References

Law Enforcement, Title 44.

7-32-4301. Regulations governing arrest authorized. The city or town council has power to make regulations authorizing the police of the city or town to make arrests of persons charged with crime:

- (1) within the limits of the city or town;
- (2) within 5 miles thereof; and

EX-101-3
FILE 2-11-93
HG 174

JANUARY 21, 1993

TO: REPRESENTATIVE TOM NELSON
HOUSE LABOR AND EMPLOYMENT RELATIONS COMMITTEE

SUGGESTED AMENDMENTS TO HB 174

A. Delete Section 3. of the bill in its entirety.

Reason: Municipal police officers are already adequately protected by the existing law which requires a full blown trial before a three member police commission before an officer can be terminated or suspended for more than ten days. The law currently provides the officer the right to appeal to district court from the decision of the police commission.

OR

B. Amend Section 3. of the bill to provide that police officers may be disciplined, suspended, removed, or discharged by the proper municipal authority and that the officer then has the option to appeal either through the police commission process or through the grievance process in the collective bargaining agreement.

Add sections amending sections 7-32-4155 through 7-32-4164 to clarify that the police commission has jurisdiction only to hear appeals brought by police officers who have been disciplined, suspended, removed, or discharged by a city or town. The decision of the police commission could still be appealed to the district court.

Reason: It is ridiculous to require a city or town to go through a full trial before a police commission, a trial governed by the rules of evidence and at which an accused police officer has the right to be represented by counsel, and then allow the police officer to negate the whole process by electing to go through a grievance process under a collective bargaining agreement. In effect, this would allow a single arbitrator to overthrow the decision of a three member police commission without any right of appeal by the city or town. This is an incredible waste of time, effort and money for everyone involved. The police officer shouldn't be allowed two bites at the apple but should be required to elect up front which method will be followed and then stick to that one method throughout the proceeding.

ROLL CALL

SENATE COMMITTEE LABOR

DATE 2/11/93

[illegible]

DATE 2/11/93

SENATE COMMITTEE ON Labor

BILLS BEING HEARD TODAY: HB 174

Name

Representing

Bill
No.

Check One
Support Oppose

[illegible]

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY